

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Revision No.708 of 2017(O&M)

Date of decision: 02.02.2017

Bhajan Lal and others

...Petitioners

Versus

Sham Lal and others

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Ms. Alka Sarin, Advocate for the petitioners.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition is directed against the concurrent findings of the Courts below whereby ejectment had been ordered from one room, one verandah, compound, latrine and bath room bearing property No.B-1/137, the boundaries of which were described and are situated on Radaur Road, within municipal limits of MC Yamuna Nagar.

The respondents pleaded that the property in dispute was owned by Krishan Lal and after his death it was inherited by Sant Lal, Radhey Sham, Rakesh Kumar, Ram Lal, Pawan Kumar and Sham Lal. Pawan Kumar had died and his share was inherited by Parkash Rani, Hunny Gupta and Mannu Gupta. Ram Lal had also died and his share was inherited by Deepak and Sandeep. Sant Lal was alleged to have been missing and therefore, his share was managed by Ashok Kumar, Sunil Kumar and Vijay Kumar. It was alleged that the house in dispute was rented out to Jagat Ram father of the present petitioner and there was relationship of landlord and tenant between the parties. The tenants had failed to pay rent from 1.4.2009 to 31.8.2009 for the five months amounting to ₹ 50/- at the rate of ₹ 120/- per annum plus house tax.

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Chandigarh

The bonafide

requirement of Sham Lal was set up on the ground that he was working in the Oil and Natural Gas Corporation at Dehradun and now he had retired and he wanted to return from Dehradun after retirement. The house in question was sufficient for him and his family requirement. It was submitted that the said applicants/respondents herein did not have any other house for occupation and neither they had vacated any such other house within the Municipal limits of Yamuna Nagar. It was specifically averred that earlier rent petition was dismissed by the Rent Controller and during the pendency of appeal the same was compromised and the appeal was also dismissed by the Appellate Authority.

The petitioners herein took the plea that Sant Lal was not heard of and therefore, petitioners Pishori Lal and Vijay Kumar were the landlords and earlier rent petition had been dismissed qua the contention of personal need and requirement. The landlords had many other properties and they had got vacated one house and other shop from some other tenants. Sham Lal was alleged not to require the demised premises as he was settled at Dehradun. The averment had also been made that house tax had been charged more than the statutory provisions and therefore, the landlords were bound to return the excess amount of house tax.

In replication and reply to the counter claim it was averred that in another rent appeal before Sh. C.B. Jaglian, Appellate Authority, Yamuna Nagar the rent had been tendered at the rate of ₹ 120/- per annum + house tax and the all the petitioners were the landlords being co-sharers.

The following issues were framed by the Rent Controller on 7.4.2010:-

- “1. Whether the respondent is liable to be ejected from the house in question on the ground of bonafide

personal necessity?OPP

2. Whether the present petition is liable to be dismissed on ground of non joinder and mis-joinder of parties?OPR
3. Whether the present petition is liable to be dismissed under Section 14 of Haryana Urban (Control of Rent & Eviction) Act, 1973?OPR
4. Whether the respondents are entitled to recover excess house tax paid by them by way of counter claim?OPR
5. Relief.”

Sham Lal was examined as AW-1 whereas Radhey Sham was examined as AW-2. The statement dated 7.4.2009 whereby compromise had been arrived at between the parties was placed on record as Ex. P2 and Ex. P3 and certificate of service as Ex. P1.

The Rent Controller on the issue of fact that the petitioners were not the landlords and there was no relationship of landlords and tenant came to the conclusion that in the common amended written statement dated 10.1.2014 filed by all the respondents, it had been averred that all the petitioners were co-owners of the demised property and therefore, it was held that there was ownership of the landlords. It was noticed that Bhajan Lal, petitioner no.1 herein who had appeared as DW-1 had himself deposed that there was agreement to sell dated 15.7.1985 qua the demised house with the said landlords and it was settled law that any co-owner of the demised property can seek eviction of the tenant on any of the ground mentioned under Section 13 of the of Haryana Urban (Control of Rent & Eviction) Act, 1973 (hereinafter referred to as “the Act”). The objection raised by the tenants was held not sustainable and rejected on the ground that no material had been produced to show that the demised property was

beyond the limitation of Municipal Corporation, Yamuna Nagar. Similarly it was held that there was no splitting of tenancy as there was no pleading regarding this ground that the shop and the demised house were rented out vide same agreement and therefore, tenancy of demised house was separate from that of the said shop. In the absence of any pleading it was held that the said argument could not be raised. The rate of rent was accepted as ₹ 120/- per annum keeping in view the statement made on 7.4.2009 and it was held that it was a self serving statement and there was nothing to show that the rent had been paid.

On the issue of bonafide requirement, it was noticed that Sham Lal had retired from ONGC, Dehradun and belonged to Yamuna Nagar. Therefore, he required the demised premises. Accordingly, it was held that the tenant cannot dictate as to which property should the landlord use. It was for the landlord to decide which property he requires. Resultantly being a co-owner, it was held that Sham Lal had a right to seek eviction.

The argument that the earlier petition had been filed on the ground of impairment of value and utility of the demised house as such would not bar the ground of bonafide use and occupation which could be agitated in the present petition. Accordingly, it was held that there was no evidence on record to prove the counter claim regarding the excess amount of house tax received and the same was rejected.

Issues no.2 regarding non-joinder and mis-joinder of necessary parties and issue no.3 regarding petition was liable to be dismissed under Section 14 of the Act were decided against the present petitioners as the same were not pressed, onus of which was upon the present petitioners.

Counsel for the petitioners has vehemently submitted that there

was an agreement to sell dated 15.7.1985 as such interse the parties and in view of the fact that the suit for specific performance had been filed in the year 2012 and ₹ 10,000/- had been received, therefore, they were in possession and the Courts below were wrong in allowing the eviction application.

The said arguments is only to be noticed and rejected.

It is not disputed that interse the parties in earlier ejectment application which was filed on 25.8.1998 on the ground of premises being unfit and unsafe and for material impairment, it was noticed that Bhajan Lal had admitted in cross-examination that there was relationship of landlord and tenant. It is admitted that the said petition was dismissed on 5.4.2007. Eventually the matter was compromised between the parties before the Appellate Authority and Bhajan Lal etc. had given statement that they were ready to pay rent at the rate of ₹ 120/- per annum. Therefore, the relationship of landlord and tenant was established interse the parties. The Courts below have rightly held that even in the absence of Sant Lal, being co-owner, one of the co-owners can file eviction petition. Service certificate of Sham Lal (Ex. P1), who had retired from ONGC and wanted to settle in his home town had been placed on record and there was bonafide requirement. The Courts below have taken into account the settled principle that the Rent Controller should presume the need of the landlord is to be genuine and the tenant cannot dictate to the landlord as to where he has to settle or not.

The Appellate Authority had rightly observed that merely because a suit for specific performance was pending, then proceedings were not liable to be stayed. Reliance has been placed upon the judgment in

Steel Strips Wheels Ltd. Vs. Tejinder Kumar and another 2015(1) PLR

507 wherein it was held as under:-

5. The contention raised by learned counsel has no relevance. In petition under Section 13 of the Act, landlord is seeking the ejectment of the revision petitioner from the demised premises on the ground of personal bonafide necessity, material alteration etc. Right to get rented premises vacated is a statutory right provided to a landlord under the provisions of the East Punjab Urban Rent Restrictions Act, 1949. The pendency of the civil suit filed by revision petitioner or by respondent landlord in no manner affect the outcome of the petition under Section 13 of the Act. The Rent Controller has committed not error of law or fact while declining the application filed by the revision petitioner.”

Resultantly, keeping in view the conduct of the parties interse amongst themselves whereby they have admitted the fact that there was a relationship of landlord and tenant, it does not lie in the mouth of the present petitioners that they were not liable to evicted from the premises in question by holding out an agreement which was not acted upon till the filing of the eviction petition.

Accordingly, findings recorded by the Courts below are justified and do not suffer from any procedural infirmity or illegality which would warrant interference by this Court in the revisional jurisdiction.

Accordingly, the present revision petition is dismissed in limine.

February 02, 2017
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(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No
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